

basis of original cost, less applicable depreciation. These reports shall be certified as correct by an authorized officer of Company and there shall be submitted along with them such other reasonable information as the Board shall request with respect to the Company's properties and expenses related to its CATV system operations within the County. The Board may hire an independent CPA to audit the Company's financial records, in which case the Company shall provide all necessary records to the CPA.

SECTION 14. REMOVAL OF CATV SYSTEM

At the expiration of the term for which this franchise is granted, or upon its termination as provided herein, Company shall forthwith, upon notice by the Board, remove at its own expense all designated portions of the CATV system from all streets and public property within the County. If Company fails to do so, County may perform the work at Company's expense. A bond shall be furnished by Company in an amount sufficient to cover this expense.

SECTION 15. REQUIRED SERVICES AND FACILITIES

a. The cable television system shall have a minimum channel capacity of thirty (30) channels. Immediately upon system activation, at least one level of cable television services must utilize a minimum of thirty (30) activated channels.

b. Such system shall maintain a plant having the technical capacity for nonvoice return, or "two-way" communications. Two-way capability shall be activated from identified user locations upon reasonable notice by the Board to the Company.

c. The Company shall maintain the following:

- (1) At least one (1) specially-designated, noncommercial public access channel available on a first-come, nondiscriminatory basis;

- (2) At least one (1) specially-designated channel for use by local educational authorities;
- (3) At least two (2) specially-designated channels for local governmental uses; and
- (4) At least one (1) specially-designated channel for leased access uses.

d. The Company shall have available equipment and other related production facilities for local production and presentation of cablecast programs other than automated services and shall permit its use for the production and presentation of public access programs.

e. All subscribers receiving channels showing first-run movies and special entertainment events shall be provided with a key-lock device which prevents the unauthorized viewing of such channels.

f. The Company shall incorporate into its cable television system the capacity which will permit the County, in times of emergency, to override, by remote control, the audio portion of all channels simultaneously. The Company shall designate a channel which will be used for emergency broadcasts of both audio and video. The Company shall cooperate with the County in the use and operation of the emergency alert override system.

g. The Company may be required to interconnect its system with other broadband communications facilities. Such interconnection shall be made within the time limit established by the Board. The interconnection shall, at the Board's discretion, be accomplished according to the method and technical standards determined by the Board and generally accepted in industry practices. "Broadband communications facility," as used herein, means any

network of cable, optical, electrical or electronic equipment, including cable television systems, used for the purpose of transmitting telecommunications signals.

Company shall use all reasonable diligence in negotiating with operators of other broadband systems and governmental authorities in arranging for such interconnection. Company may be excused from any requirements under this paragraph upon a showing that the operator of the broadband facility to be interconnected or the franchising authorities in other jurisdictions refuse to reach a reasonable agreement regarding such interconnection.

h. The Company shall provide such additional services and facilities as are contained in its application, which is incorporated by reference herein.

ARTICLE III. ADMINISTRATION AND REGULATION

SECTION 1. RULES AND REGULATIONS

a. In addition to the inherent powers of the County to regulate and control this franchise, and those powers expressly reserved by the County, or agreed to and provided for herein, the right and power is hereby reserved by the Board to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this franchise.

b. The County may also adopt such regulations at the request of Company upon application.

SECTION 2. PERFORMANCE EVALUATION SESSIONS

a. The CATV Board and the Company shall hold scheduled performance evaluation sessions within thirty (30) days of the third, sixth, ninth, and twelfth anniversary dates of the Company's award of the franchise and as may be required by federal and state law. All such evaluation sessions shall be open to the public.

b. Special evaluation sessions may be held at any time during the term of the franchise at the request of the Board or the Company.

c. All evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with KRS 424. Company shall notify its subscribers of all evaluation sessions by announcement on at least two (2) of the highest-rated origination channels of its system between the hours of 7:00 p.m. and 9:00 p.m., for five (5) consecutive days preceding each session.

d. Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures; franchise fee; penalties; free or discounted services; application of new technologies; system performance; services provided; programming offered; customer complaints; privacy; amendments to this ordinance; judicial and FCC rulings; line extension policies; and Company or County rules.

e. Members of the general public may add topics either by working through the negotiating parties or by presenting a petition. If such a petition bears the valid signatures of fifty (50) or more residents of the County, the proposed topic or topics shall be added to the list of topics to be discussed at the evaluation session.

SECTION 3. INITIAL RATES; REQUEST TIMING;
DETERMINATION OF AUTHORITY

a. Initial Rates

(1) The Company shall establish initial rates for its services in accordance with the rates contained in Company's application for this franchise.

(2) Initial basic subscriber rates shall be effective for a minimum of three (3) years from the date of the franchise award.

(3) The Company shall waive basic subscriber service installation fees for a reasonable period of time as each segment of the system in the County is activated.

b. Minimum Timing of Requests. The Company may request a rate change at any time after three (3) years of the franchise award, provided that not more than one (1) request may be made by the Company in any twelve (12) month period.

SECTION 4. RATE CHANGE PROCEDURES

a. Rates Subject to Review. The Board shall have the authority to review the following rates, fees and charges:

- (1) Rates for the provision of basic service to subscribers, whether residential or commercial.
- (2) Rates for the connection, installation and reinstatement (including converters) of basic service, whether residential or commercial.
- (3) Rates for installation, connection and reinstatement of basic service where unusual circumstances exist such as remote or inaccessible subscriber locations or subscriber requested underground service drops.

b. The Company may petition the Board for a change in rates by filing, in triplicate, a proposed rate schedule with the County Clerk, which petition shall include the justification(s) for the proposed schedule. Said petition shall be filed at least ninety (90) days prior to the requested implementation date of the rate change. One (1) copy of the petition shall remain on file with the County Clerk and be open for public inspection.

c. Within ninety (90) days of the filing of the petition for rate change, the Board shall hold an appropriate public hearing to consider the proposed rate change, at which hearing all persons desiring to be heard, including the Company, shall be heard on any matter, including but not limited to, the performance of this franchise, the Company's services, and the proposed new rates.

d. Upon notice of any public hearing as provided in subsection (c), the Company shall notify its subscribers of the time, place and subject matter of the public hearing by announcement on at least two (2) of the highest-rated origination channels of its system between the hours of 7:00 p.m. and 9:00 p.m., for at least five (5) consecutive days prior to the hearing. In addition, notice of any public hearing shall be published in a newspaper of general circulation at least once, but may be published two (2) or more times, provided that one (1) publication occurs not less than seven (7) nor more than twenty-one (21) days before the public hearing. Each advertisement must be two (2) column inches in height and four (4) column inches long. Company shall be responsible for publication and associated costs.

e. Within ninety (90) days after said hearing, the Board shall render a written decision on the Company's petition, either accepting, rejecting, modifying or deferring the same and reciting the basis of its decision. The Board shall consider, inter alia, the following factors in approving or disapproving the petition:

- (1) the ability of the Company to render System services and to derive a reasonable profit therefrom under the existing rate schedule and under the proposed rate schedule;
- (2) the revenues and profits derived from System services;
- (3) the efficiency of the Company;
- (4) the quality of the service offered by the Company;
- (5) the original cost of the System less depreciation;
- (6) a fair rate of return with respect to the cost of borrowing and the rates of return on investments having similar risks to that of cable television;
- (7) the extent to which the Company has adhered to the terms of this agreement; and
- (8) fairness to County residents, subscribers and users.

The Board shall not consider any valuation based upon this franchise or the Company's goodwill and these items of value shall neither be amortized as an expense nor shall a return be paid on them.

f. If the Board fails to render a written decision either accepting, rejecting, modifying, or deferring Company's petition within ninety (90) after said hearings, the Company shall thereafter be entitled to put its proposed new rates into effect on a provisional basis, provided that it shall keep a full and accurate accounting of all income resulting from said provisional rates and shall be obliged for a period of ninety (90) days thereafter to refund the amount by which said provisional rates exceed the rates ultimately established by the Board. Upon request by the Board, the Company shall provide a bond or other reasonable surety to insure that possible refunds due under this subsection shall be promptly made. The bond or surety shall be in an amount not to exceed the difference between the amount of revenues generated in ninety (90) days at the previously existing rates and the amount of revenues expected to be generated in ninety (90) days at the provisional rates.

g. If no final decision on the Company's petition has been rendered by the Board within one hundred eighty (180) days of the hearing, the Company's petition will be deemed approved. Action of the Board is final and not appealable.

b. The Company's petition for a rate increase shall include, but not be limited to, the following financial reports, which shall reflect the operations of the Kenton/Boone County system only.

- (1) Balance Sheet
- (2) Income Statement
- (3) Cash Flow Statement
- (4) Statement of Sources and Applications of Funds
- (5) Detailed Supporting Schedules of Expenses, Income, Assets and other items as may be required.
- (6) Statement of Current and Projected Subscribers and Penetration.

The Company's accounting records applicable to the Kenton/Boone County system shall be available for inspection by the County at all reasonable times. The Board shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to the Boone County operation. The documents listed above shall include sufficient detail and/or footnotes as may be necessary to provide the Board with the information needed to make accurate determinations as to the financial condition of the system. All financial statements shall be certified as accurate by an officer of Company.

SECTION 5. KENTON/BOONE CATV BOARD

a. There shall be established by the County a cable television regulatory authority entitled the Kenton/Boone CATV Board.

b. The Board shall be comprised of:

- (1) Three (3) members nominated from the Kenton County Fiscal Court
- (2) Three (3) members nominated from the Municipal Government League of Kenton County, Inc.
- (3) Two (2) members nominated from the City of Covington.
- (4) One (1) member nominated from the Boone County Fiscal Court.
- (5) One (1) member nominated from the City of Florence.

c. The Board members from the Kenton Fiscal Court, Municipal League, and Covington shall be appointed by the Kenton County Fiscal Court upon recommendation of the judge/executive, while the Boone County Fiscal Court shall appoint their representative and the representative of the City of Florence upon recommendation of the judge/executive. Fiscal Courts shall appoint all candidates nominated by the Municipal Government League of Kenton County, the City of Covington, and the City of Florence.

d. The Board members shall be appointed for terms of two (2) years, provided, that in making the initial appointments and nominations, the Kenton County Fiscal Court shall appoint one (1) Board member for a term of one (1) year and one (1) Board member for a term of two (2) years; the Municipal Government League of Kenton County shall nominate one (1) Board member for a term of one (1) year and two (2) Board members for a term of two (2) years; the City of Florence shall nominate one (1) Board member for a term of two (2) years; and the Boone County Fiscal Court shall appoint one (1) Board member for a term of two (2) years.

e. The Board shall have all powers vested in this ordinance to administer said ordinance following its passage by the Boone County Fiscal Court. The Board shall also determine its meeting dates and rules of order and operation in accordance with state law.

SECTION 6. PENALTIES

For the violation of any of the following provisions of this franchise, penalties shall be chargeable to the letter of credit as follows:

a. For failure to complete system construction and provide service in accordance with Article II, Section 2, unless the Board specifically approves the delay by motion or resolution, due to the occurrence of conditions beyond Company's control, Company shall pay Five Hundred Dollars (\$500.00) per week for each week, or part thereof, the deficiency continues.

b. For failure to provide data, documents, reports, information as required by Article XI, Sections 9, 11, 12, 13, and Article XII, Section 4, Company shall pay Fifty Dollars (\$50.00) per day each violation occurs or continues.

c. For failure to test, analyze and report on the performance of the system following a request pursuant to Article II, Section 7, Company shall pay Fifty Dollars (\$50.00) per day for each day, or part thereof, that such noncompliance continues.

d. For failure to comply with the operational standards following the Council's resolution directing Company to make improvements pursuant to Article II, Section 5, Company shall forfeit Two Hundred Dollars (\$200.00) per day or part thereof that the violation continues.

SECTION 7. FORFEITURE AND TERMINATION

a. In addition to all other rights and powers retained by the Board under this franchise or otherwise, the Board reserves the right to forfeit and terminate the franchise and all rights and privileges of the Company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by Company shall include, but shall not be limited to the following:

- (1) Violation of any material provision of the franchise or any material rule, order, regulation or determination of the Board made pursuant to the franchise;
- (2) Attempt to evade any material provision of the franchise or practice any fraud or deceit upon the County or its subscribers or customers;
- (3) Failure to begin or complete system construction or system extension as provided under Article II, Section 2;
- (4) Failure to provide the services promised in Company's application as incorporated herein by Article I, Section 4;
- (5) Failure to restore service after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the Board; or
- (6) Material misrepresentation of fact in the application for or negotiation of the franchise.

b. The foregoing shall not constitute a major breach if the violation occurs but it is without fault of the Company or occurs as a result of circumstances beyond its control. Company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

c. The Board may make a written demand that the Company comply with any such provision, rule, order, or determination under or pursuant to this franchise. If the violation by the Company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the County may place the issue of termination of the franchise before the CATV Board. The Board shall cause to be served upon Company, at least twenty (20) days prior to the date the Board considers the issue of termination, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which Board is to consider.

d. The CATV Board shall hear and consider the issue and shall hear any person interested therein, and shall determine in its discretion whether or not any violation by the Company has occurred.

e. If the CATV Board shall determine the violation by the Company was the fault of Company and within its control, the Board may, by resolution, declare that the franchise of the Company shall be forfeited and terminated unless there is compliance within such period as the CATV Board may fix, such period not to be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

f. The issue of forfeiture and termination shall automatically be placed upon the Board agenda at the expiration of the time set by it for compliance. The Board then may terminate the franchise forthwith upon finding that Company has failed to achieve compliance or may further extend the period, in its discretion.

SECTION 8. FORECLOSURE

Upon the foreclosure or other judicial sale of all or a substantial part of the CATV system, or upon the termination of any lease covering all or a substantial part of the CATV system, the Company shall notify the Board of such fact, and such notification shall be treated as a notification that a change in control of the Company has taken place, and the provisions of this franchise governing the consent of the CATV Board to such change in control of the Company shall apply.

SECTION 9. RECEIVERSHIP

The Board shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take

over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

a. Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this ordinance and remedied all defaults thereunder; and

b. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this ordinance and the franchise granted to the Company.

SECTION 10. PURCHASE OF CATV SYSTEM BY COUNTY

a. Rights to Purchase

In the event the Company forfeits and County terminates this franchise pursuant to provisions of this ordinance, or at the normal expiration of the franchise term, the County shall have the right, directly or as an intermediary, to purchase the franchised CATV system.

b. Franchise Valuation

The value of the franchise shall be the aggregate of the replacement value of tangible assets and the going concern value of the CATV system.

The "going concern value" shall mean the benefits that attach to the business as a result of its location in the County, Company's reputation among franchise subscribers or potential subscribers for dependability and quality of service, and any other circumstances resulting in probable retention of

old subscribers or acquisition of new subscribers; except no value shall be assigned to either the franchise itself or any right, privilege or expectancy arising to Company out of the right to transact business under the franchise, and particularly no value shall be allowed for any increase in value arising out of any expectation of cable CATV system revenues beyond the forfeiture and termination date or expiration date, whichever is sooner.

In the acceptance of this franchise Company expressly waives its rights, if any, to relocation costs that might otherwise be provided by law.

c. Date of Valuation

The date of valuation shall be no earlier than the day following the date of expiration or termination and no later than the date County makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.

d. Transfer to County

Upon exercise of this option and the payment of the above sum by the County and its service of official notice of such action upon Company, the Company shall immediately transfer to the County possession and title to all facilities and property, real and personal, of the CATV system, free from any and all liens and encumbrances not agreed to be assumed by the County in lieu of some portion of the purchase price set forth above; and the Company shall execute such warranty deeds or other instruments of conveyance to County as shall be necessary for this purpose.

e. Arbitration of Value and Costs

(1) In the event County and Company cannot agree upon the value of CATV system, either may give notice of a demand to the other for arbitration.

(2) Arbitration shall commence and proceed according to law except as follows:

(a) The parties shall, within fifteen (15) days, appoint one arbitrator each who is experienced and knowledgeable in the valuation of business property. Arbitrators shall each agree upon the selection of a third arbitrator, similarly qualified, within fifteen (15) days.

(b) Within thirty (30) days after appointment of all arbitrators and upon ten (10) day's written notice to parties, the board of arbitrators shall commence a hearing on the issue of valuation.

(c) The hearing shall be recorded and may be transcribed at the request of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter publicly stated in the order to adjourn, except as otherwise authorized by the County Attorney.

(d) At the close of the hearings and within thirty (30) days, the board of arbitrators shall prepare findings and decision agreed upon by a majority of the board which shall be filed with the County and served by mail upon the Company. Unless the parties extend by mutual agreement the time which the board of arbitrators has to make a decision, the proceedings shall become null and void and shall be started anew.

(e) The decision of the board shall be final and binding upon the parties.

(f) Either party may seek judicial relief in the following circumstances:

- (i) a party fails to select an arbitrator;
- (ii) the arbitrators fail to select a third arbitrator;
- (iii) one or more arbitrator is unqualified;
- (iv) designated time limits have been exceeded;
- (v) the board has not proceeded expeditiously; and
- (vi) based upon the record the board abused its discretion.

(g) In the event a court of competent jurisdiction determines the board of arbitrators has abused its discretion, it may order the arbitration procedure repeated and issue findings, orders and directions, with costs of suit to be awarded to the prevailing party.

(h) Cost of arbitration shall be borne equally unless the board of arbitrators finds the offer of the County or the demand of Company was unreasonable, in which case, cost may be apportioned so that less or none of the costs may be borne by one party.

SECTION 11. COMPLIANCE WITH STATE AND FEDERAL LAWS

Notwithstanding any other provisions of this franchise to the contrary, the Company shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof. Provided, however, if any such state or federal law or regulation shall require the Company to perform any service, or shall permit the Company to perform any service, or shall prohibit the Company from performing any service, in conflict with the terms of this franchise or of any law or regulation of the County, then as soon as possible following knowledge thereof, the Company shall notify the CATV Board of the point of conflict believed to exist between such regulation or law and the laws or regulations of the County or this franchise.

If the CATV Board determines that a material provision of this ordinance is affected by any subsequent action of the state or federal government, the Board shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full intent and purpose of this agreement.

SECTION 12. LANDLORD/TENANT

a. Interference with Cable Service Prohibited.

Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable communication service, cable installation or maintenance from a cable communication company regulated by and lawfully operating under a valid and existing cable communication franchise issued by the County.

b. Gratuities and Payments to Permit Service Prohibited

Neither the owner of any multiple unit residential dwelling nor his agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of a cable communication service to the dwelling unit occupied by a tenant or resident requesting service.

c. Penalties and Charges to Tenants for Service Prohibited

Neither the owner of any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communication service from a Company operating under a valid and existing cable communication franchise issued by the County. Any person convicted of violating any provision of this section is subject to a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) for each offense. Each day's violation of this section shall be considered a separate offense.

d. Reselling Service Prohibited

No person shall resell, without the expressed, written consent of both the Company and the CATV Board, any cable service, program or signal transmitted by a cable communication company operating under a franchise issued by the County.

e. Protection of Property Permitted

Nothing in this article shall prohibit a person from requiring that cable communications system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

f. Risks Assumed by Company

Nothing in this article shall prohibit a person from requiring a cable communication company from agreeing to indemnify the owner, or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable communication facilities.

SECTION 13. THEFT OF SERVICES AND TAMPERING

a. No person, whether or not a subscriber to the cable system may intentionally or knowingly damage or cause to be damaged any wire, cable, conduit, equipment or apparatus of Company, or commit any act with intent to cause such damage, or to tap, tamper with or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus, or appurtenances of Company with the intent to obtain a signal or impulse from the cable system without authorization from or compensation to the Company, or to obtain cable

television or other communications service with intent to cheat or defraud Company of any lawful charge to which it is entitled.

b. Any person convicted of violating any provision of this section is subject to a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) for each offense. Each day's violation of this section shall be considered a separate offense.

Passed by the Fiscal Court of Boone County on the 16
day of December, 1980.

Bruce Ferguson

ATTEST:

James H. Reese
County Clerk

ACCEPTANCE

Company accepts and hereby agrees to be bound by all the terms and conditions of this franchise.

Dated: _____

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of Section 302 of)	
the Telecommunications Act of 1996)	CS Docket No. 96-46
)	
Open Video Systems)	

To: The Commission

DECLARATION OF GREGORY L. SCOTT
IN SUPPORT OF PETITION FOR RECONSIDERATION

I, Gregory L. Scott, declare as follows:

1. I submit this declaration in support of the Petition for Reconsideration of the National League of Cities; the United States Conference of Mayors; the National Association of Counties; Montgomery County, Maryland; and the City of Los Angeles, California ("City") in the above-captioned matter. I am fully competent to testify to the facts set forth herein, and if called as witness, would testify to them.

2. I am the Assistant Director, Bureau of Street Maintenance, Department of Public Works of the City of Los Angeles ("City").

3. The City spends approximately \$70 million each year on street maintenance, repair and repaving of the public rights-of-way.

4. The City repaves approximately 200 miles each year, out of a total of approximately 6,900 miles of paved streets and alleys.

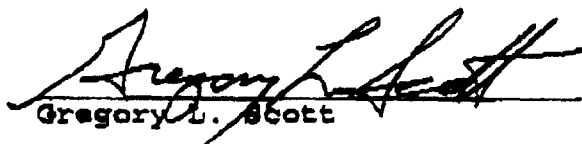
5. This repaving activity does not keep pace with current levels of damage to and deterioration of the rights-of-way. The City's backlog of needed street repairs and repaving represents approximately \$1 billion in required and deferred maintenance costs.

6. The City's total investment in construction and improvement of the public rights-of-way is currently about \$5 billion. This sum does not include the additional value of the underlying property itself.

7. Each additional street cut significantly reduces the life of the street surface and hence requires more frequent repair.

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on July 5, 1996, at Los Angeles, California.


Gregory L. Scott

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